

Article 19

LEAVES OF ABSENCE WITHOUT PAY

Section A. Eligibility.

Employees shall have the right to request a leave of absence without pay in accordance with the provisions of this Article. A leave of absence may be granted to a probationary employee at the sole discretion of the employer and denial of a request from a probationary employee shall not be grievable.

Section B. Request Procedure.

Any request for a leave of absence without pay shall be submitted in writing by the employee to the employee's appropriate supervisor at least (except under emergency circumstances) 30 calendar days in advance of the proposed commencement date for the leave. The request shall state the reason for and the length of the leave of absence being requested.

The supervisor shall consult with the Appointing Authority and furnish a written response as follows:

- Requests for leaves of absence not exceeding one month shall be answered within 14 calendar days.
- Requests for a leave of absence exceeding one month shall be answered within 28 calendar days.

Section C. Approval.

Except as otherwise provided in this Agreement or in applicable statute, employees may be granted a leave of absence without pay at the discretion of the Appointing Authority for a period up to six months.

1. **Criteria for Consideration of Request.** Appointing Authority determinations under this Section shall not be arbitrary, discriminatory or capricious. When considering whether to grant the requested leave of absence:
 - a. The Employer shall consider its operational needs, the employee's length of service, and work performance;
 - b. The Employer shall consider the probability of the employee's ability to return to work within a reasonable period of time;
 - c. The request for a medical leave of absence will not be denied solely on the basis that the employee has previously been granted an aggregate of six months of medical leave of absence.
2. **Criteria for Extensions.** Only under bona fide mitigating circumstances may a leave of absence be extended beyond six months.

Except as may otherwise be provided in this agreement, an employee may elect to carry a balance of annual leave during a leave of absence. An employee may elect to carry a compensatory time balance during the leave of absence only with the approval of the Appointing Authority. Denial of a request to carry a compensatory balance shall not be grievable. Such leave balances shall be made available to the employee upon return from a leave of absence but may be utilized only with prior approval of the Appointing Authority.

Payment for annual leave or compensatory leave due an employee upon going on, or who fails to return from, a leave of absence shall be at the employee's last rate of pay.

Section D. Educational Leave of Absence.

The Employer may approve an individual employee's written request for a full-time educational leave of absence for an initial period of time up to one year. To qualify for such an educational leave, the employee must be admitted as a full-time student as determined by the established requirements of the educational institution relating to full-time status. Before the leave of absence can become effective, a curriculum plan and proof of enrollment must be submitted by the employee to his/her Appointing Authority.

At the request of the Employer, the employee shall provide evidence of continuous successful full-time enrollment in such curriculum plan in order to remain on or renew such leave. Such education shall be directly related to the employee's field of employment. Such employee may return early from such a leave upon approval by the Employer. The Employer shall approve or deny the request for leave of absence without undue delay. Any denial shall include a written explanation of the denial, if requested by the employee.

Section E. Medical Leave of Absence.

Upon depletion of accrued sick leave credits, an employee upon request shall be granted a leave of absence for personal illness, injury or temporary disability necessitating his/her absence from work. Such leave shall be granted for a period of up to six months within a five-year period, plus any approved extensions upon providing required medical information. Time off on medical leave of absence due to pregnancy shall not be counted against this six-month period. The employee's request shall include a written statement from the employee's physician indicating the specific diagnosis and prognosis necessitating the employee's absence from work and the expected return to work date.

A request for a medical leave of absence after the employee has returned to work from an injury or illness absence, due to complications and/or a relapse from that injury or illness will be considered as a medical leave extension request, provided this type of extension is requested within 60 calendar days of return from the original absence.

In addition to the operational needs of the Employer and the employee's work record, the Employer in considering requests for extension will consider verifiable medical information that the employee can return at the end of the extension period with the ability to fully perform the job. When an employee, who has exhausted a medical leave of absence of one-year duration, is required to be in employee status in order to collect an awarded employment-related benefit, the Employer agrees to retroactively extend such medical leave of absence solely to afford the employee the opportunity to receive such benefit.

In all other circumstances, a request to extend a medical leave of absence for more than one year may be granted in the sole discretion of the Employer, and only upon sufficient evidence being presented that the employee will, upon expiration of the extension, be able to return to full performance of duties. A denial of such request shall not be grievable.

When a status employee's request for extension of a medical leave of absence is denied, upon individual employee written request, the Employer shall grant a waived rights leave of absence for a period not to exceed one year pursuant to Section I. of this Article.

The Employer reserves the right to have the employee examined by a physician selected and paid by the Employer for the employee's initial request, extension and/or return to work.

This Section shall not impair the right of the Employer to require an employee to furnish acceptable medical certification from his/her health care provider (as the term is defined under the FMLA and its implementing regulations) of the employee's mental and/or physical fitness to continue or return to work.

Section F. Family and Medical Leave Act.

The parties recognize that the Employer and employees are subject to the provisions of the federal Family and Medical Leave Act (the Act) and have recorded their agreement on implementation of the right and obligations of employees and the Employer under the terms of the Act and its implementing regulations, as may be amended from time to time, in the accompanying Letter of Understanding. The provisions of this Agreement pertaining to the employee's own serious health condition (medical leave), parental leave, and family care leave shall be administered in a manner to assure that the employee's rights under the Act and its implementing regulations are respected. A complaint that such rights under the Act or its implementing regulations have been violated by the Employer shall not be a grievance for purposes of this Agreement.

Section G. Military Leave.

Whenever an employee enters into the active or inactive military service of the United States, the employee shall be granted a military leave of absence and granted

such seniority and benefit continuation entitlement as provided under Civil Service Rules and Regulations and applicable statutes.

Whenever an employee is required to attend active or inactive duty training, s/he shall be allowed to utilize up to 15 days administrative leave or, annual leave and/or compensatory time for the period of training. Upon employee request, the employee shall be released on annual leave and/or compensatory time even if the number of annual leave slots under the formula are filled. Previously approved annual leave requests shall not be canceled to accommodate the military leave. However, if an annual leave slot under the formula is available, the employee(s) shall be placed in the available openings. In the event the employee does not have sufficient accruals to cover such absence, approved lost time shall be granted. Written notification must be given to the employee's supervisor as soon as the employee is aware of his/her training schedule.

Section H. Leave for Union Office.

The Employer shall grant requests for leaves of absence to employees in this Bargaining Unit upon written request of MCO, and upon written request of the employee, subject to the following limitations:

1. The written request of MCO shall be made to the employee's Appointing Authority and shall indicate the purpose of the requested leave of absence.
2. If the requested leave of absence is for the purpose of permitting the employee to serve in an elective or appointive office with either MCO or the International, the request shall state what the office is, the term of such office and its expiration date. This leave shall cover the period from the initial date of election or appointment through the expiration of the first full term of office.
3. If the requested leave of absence is for the purpose of permitting the employee to serve as a staff representative for either MCO or the International, such leave shall be for a minimum of two pay periods but shall not extend beyond the end of this Agreement.
4. The Employer is not obligated to grant such leaves of absence for more than one employee from any one Agency in the Department of Corrections or more than one from any other Department. For purposes of this Section, "Agency" in the Department of Corrections is defined as a Facility or Community Corrections Program.

Section I. Waived Rights Leave of Absence.

The Employer may grant a waived rights leave of absence for a period up to one year to an employee in those situations when an employee must leave his/her position for reasons beyond his/her control and for which a regular leave of absence is not granted. Employees do not have the right to return to state service at the end of a waived rights leave of absence but will have the continuous nature of their service

protected, provided they return to work prior to the expiration of such leave. All requests for a waived rights leave of absence must be made to the employee's Appointing Authority in writing specifying the reason for the request. An employee granted a waived rights leave of absence may not carry any annual leave balance during such leave.

Section J. Parental (Maternity/Paternity) Leave.

Upon written request, an employee shall be granted parental leave for up to six months, following the birth of his/her child, or adoption of a child. Such leave may commence immediately following the expiration of the employee's medical leave (for the mother) or upon adoption, but not later than six weeks following delivery or upon adoption of a child (for the father). If both parents are covered by this contractual provision, such leaves may be taken either concurrently or consecutively. Based upon its operational needs, the Employer may grant an extension of such leave upon request of the employee. The Employer shall consider a request for annual leave immediately prior to or subsequent to the period of the parental leave in the same manner as a request for annual leave at other times. This Section does not diminish entitlements under the FMLA, such as inception of leave for the father.

Section K. Return from Leave of Absence.

1. An employee returning to work from an approved leave of absence of six months or less (other than waived rights) will be restored to the position which he/she left, including shift, RDOs and bid job, if applicable.
2. An employee returning from an approved leave of absence of more than six months (other than waived rights) will be restored to a position in the employee's same classification and work location. The Employer will make a good faith effort to return the employee to his/her former shift, RDOs and bid job, but subject to the provisions of Article 15.

However, an employee returning from a Union leave of absence shall be returned to the work location from which he/she departed, and to the shift on which he/she was employed if, at the time of return, he/she has more seniority than the least senior employee on the shift, or there is a vacancy on the shift.

3. An employee who requests to return to work prior to the expiration of the approved leave (other than waived rights) may return only with the approval of the Appointing Authority. Such approval shall not be arbitrarily withheld.

Section L. Jury and Witness Duty.

An employee engaged in jury duty, including the jury selection process, shall be released from the scheduled workday for such duty. An employee so released may elect to receive payment for such jury service under one of the following arrangements:

1. Leave of absence without pay, in which case the employee shall retain jury duty pay and travel/meal expense reimbursement (if any); or

2. Compensatory time or (in the absence of available compensatory time credits), annual leave credits, in which case the employee shall retain the jury duty pay and travel/meal expense reimbursement (if any); or
3. Paid administrative leave, in which case the employee shall remit the jury duty pay (but not travel/meal expense reimbursement) to the Employer.

Upon being notified of jury duty, the employee shall provide notice to the Employer, and thereafter apprise the Employer of the jury duty schedule on a daily basis before the beginning of the employee's scheduled work day. While on jury duty, the employee's schedule shall be adjusted (if the employee requests) to approximate as nearly as possible the court's schedule (e.g., first shift, Monday through Friday). In the event the employee is to receive paid administrative leave, such payment shall be at the base rate (excludes shift differential).

An employee subpoenaed to appear before a court in the judicial branch of government as a witness for the people, or to give testimony arising out of his/her duties as a state employee (and the employee had a reasonable basis for believing his/her conduct was within the scope of authority delegated to the employee), the employee shall be released on paid administrative leave. Second and third shift employees shall be permitted an equivalent amount of time off from the scheduled work on their preceding or succeeding shift for such appearance. The employee shall remit to the Employer all witness fees received (up to the amount of their salary), including travel/meal expense reimbursement received. The employee will be reimbursed by the Employer for any travel/meal expenses in accordance with the State Standardized Travel Regulations.

If an employee is requested or subpoenaed as a witness or appears in court in any other capacity, he/she will not be considered as performing duties associated with state employment, nor shall paid administrative leave be granted.